

In addition to the Kentucky statutes there also are several federal statutes that deal with the various issues of identity theft.

The offense with which Crouch argues he should have been charged, giving a peace officer a false name, is governed by KRS 523.110(1), which provides:

A person is guilty of giving a peace officer a false name or address when he gives a false name or address to a peace officer who has asked for the same in the lawful discharge of his official duties with the intent to mislead the officer as to his identity. The provisions of this section shall not apply unless the peace officer has first warned the person whose identification he is seeking that giving a false name or address is a criminal offense.

In order to convict Crouch of theft of identity under KRS 514.160(1)(d), the Commonwealth must have proven beyond a reasonable doubt that Crouch knowingly used another person's identifying information with the intent to represent himself as that other person in order to avoid detection. There is no dispute that Crouch's conduct met those elements.

In fact, Crouch gave the officer both Kiger's name and Social Security number, each of which is specifically mentioned as being identifying information sufficient to charge Crouch with theft of identity. By contrast, giving another person's Social Security number to a peace officer would not be enough, standing alone, to support a charge of giving a false name to a peace officer because KRS 523.110(1) provides that a person commits the offense of giving a peace officer a false name only

when, after being sufficiently warned, the person "gives a false name or address to a peace officer who has asked for the same in the lawful discharge of his official duties with the intent to mislead the officer as to his identity." So the fact that Crouch was not warned by the arresting officer, combined with the fact that Crouch gave the police officer both Kiger's name and Social Security number, but not his address, leads to the inescapable conclusion that Crouch's conduct falls more properly under the theft of identity statute than the giving a peace officer a false name statute.

AVOIDING DETECTION

On May 6, 2011, the Kentucky Court of Appeals rendered yet another unpublished opinion in the case of Mills v. Com. No. 2009-CA-001930-MR. In this case Louisville Metro Police Department Officer Scott McConnell was called after Robert Mills was detained by Wal-Mart loss-prevention employees for stealing merchandise. Mills told Officer McConnell that he did not have any identification. McConnell warned Mills "that giving false information was a crime." Robert nevertheless proceeded to give the officer his brother David's personal information. This information included David's name, date of birth and Social Security number.

The arrest warrant in the case states that this information was given to the officer for the purpose of avoiding

detection by police. Because Mills gave the incorrect information to the officer, David Mills was charged with theft by unlawful taking. After David learned of the charge, he contacted McConnell and informed him that this was not the first time Robert had used his information. The commonwealth executed an information, charging Robert with theft of identity, a class D felony, pursuant to KRS 514.160.

Mills argued in the case that the commonwealth was required to prosecute him for the misdemeanor offense of giving a peace officer a false name under KRS 523.110, rather than the felony offense of theft of identity under KRS 514.160. The relevant provision of KRS 514.160, under which Robert was convicted, was discussed previously in the Crouch case.

Despite his argument that the prosecutor had improperly charged him, the Court held that because Mills waived his right to indictment by grand jury, he granted the prosecutor discretion to decide whether to charge him with the felony or the misdemeanor. And, as such, there was no error in the case.

Each of these cases presents a different set of individual facts. However, in each, the Kentucky courts upheld the felony convictions for the theft of identity offense.

Kentucky law enforcement personnel should also be aware that KRS 15.113, which went into effect on July 15, 2010, provides that, "The Office of the Attorney General shall coordinate with the Department of Financial Institutions, the United States Secret Service, the Federal Trade Commission, the Kentucky Bankers' Association, and any other agency or organization to prepare and disseminate information to prevent identity theft."

In addition to the Kentucky statutes there also are several federal statutes that deal with the various issues of identity theft. Officers with questions concerning identity theft statutory provisions should contact their local legal advisors and/or prosecutors for guidance. Questions also can be forwarded via email to the DOJT Legal Training staff at docjt.legal@ky.gov.